

OTKUPMAN LAW FIRM, A LAW CORPORATION

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January 23, 2025

VIA ELECTRONIC FILING

Labor & Workforce Development Agency

VIA CERTIFIED MAIL

J&A's Cake Shop Inc.
908 26th St.
Santa Monica, CA 90403
Defendant certified mail # 9589 0710 5270 2390 8665 15

VIA CERTIFIED MAIL

Agent for Service of Process
Ralph G Barton Jr.
908 26th St.
Santa Monica, CA 90403
Agent certified mail # 9589 0710 5270 2390 8665 15

VIA CERTIFIED MAIL

J&AS Cake Shop Inc.
Nothing Bundt Cakes
908 26th St.
Santa Monica, CA 90403
Defendant certified mail # 9589 0710 5270 2390 8665 15

VIA CERTIFIED MAIL

Nothing Bundt Cakes
27746 Santa Margarita Pkwy
Mission Viejo, CA 92691
Defendant certified mail # 9589 0710 5270 2390 8665 08

Re: ***Yesenia Bahena v. J&A's Cake Shop Inc., J&AS Cake Shop Inc. - Nothing Bundt Cakes,
Nothing Bundt Cakes – Compliance Letter of California Labor Code § 2698 – Private
Attorneys General Act***

Labor & Workforce Development Agency
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J&AS Cake Shop Inc. - Nothing Bundt Cakes
Nothing Bundt Cakes
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Dear Sir or Madam:

This office represents Yesenia Bahena ("Plaintiff"), a California employee of J&A's Cake Shop Inc., J&AS Cake Shop Inc. - Nothing Bundt Cakes, Nothing Bundt Cakes ("Defendants"). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client works for Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California non-exempt employees.

Plaintiff began working for Defendant on or about April 1, 2022. While working for Defendant as a Froster, Plaintiff was earning twenty-five dollars (\$25.00) per hour.

Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

Plaintiff and Defendant's California employees were required to work off the clock for Defendant. Defendant did not compensate Plaintiff and Defendant's California employees if these tasks were completed outside of her regular work hours. These excess hours were not recorded on our client's and Defendant's California employees wage statements. Plaintiff and Defendant's California employees should have been compensated for that time, but she was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

Defendant failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant's California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendant's failure to pay all overtime wages due. Moreover, Plaintiff and the California employees wage statements' failed to accurately state the

name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8). Since the wage statements provided to Plaintiff failed to accurately reflect the total number of Plaintiff's worked hours, these violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendant's California employees.

Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hour worked.

Our client further alleges that Defendants paid her and Defendant's California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

Defendant pays Plaintiff and its California employees on a bi-monthly basis and has failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-monthly basis must be paid no later than ten calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

Defendant failed to reimburse Plaintiff and Defendant's California employees for using their personal cell phones for the benefit of Defendant. Plaintiff and Defendant's California employees had to clock in using an application on her cell phone. Despite requiring such a clock-in, Defendant failed to reimburse Plaintiff and Defendant's California employees for use of their cell phone. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

Defendants failed to pay all wages earned to Plaintiff and Defendant's California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendant's California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

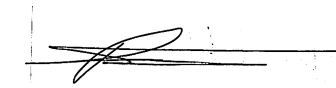
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We invite Defendants or its attorney(s) to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

OTKUPMAN LAW FIRM

A handwritten signature in black ink, appearing to be 'Roman Otkupman', is written over a horizontal line.

ROMAN OTKUPMAN